

SUPREME COURT of the UNITED STATES.

---

February Term, 1794.

ON the meeting of the Court, a commission was read, dated the 28th of January, 1794, appointing *William Bradford*, Esquire, Attorney-General of the United States\*. 1794.

The STATE of GEORGIA, *versus* BRAILSFORD, *et al.*

THIS cause was now tried, by a special jury, upon an amicable issue, to ascertain, whether the debt due from *Spalding*, and the right of action to recover it, belonged to the State of *Georgia*, or to the original creditors, under all the circumstances, which are set forth in the pleadings and arguments on the equity side of the Court? See 2 vol. *Dall. Rep.* 403. 415.

For the plaintiff, *Ingersoll* and *Dallas*, proposed two objects for enquiry:—1. Was the debt due from *Spalding*, at any time the property of the State?—2. Has the title of the State ceased, or been removed, and the right of action re-vested in the defendants?

1. On the *first* point, they contended, that *Georgia* as a sovereign State, had power to transfer the debt in question from the original creditor, an alien enemy, to herself, notwithstanding some of the debtors were citizens of another State; that by her confiscation law she had declared the intention to make the transfer; and that without an inquest of office, her intention had been carried into effect in due form, and according to

*Mr. Bradford* was appointed in the room of *Edmund Randolph*, Esq. who had accepted the office of Secretary of State.

1794. law, as well in relation to her own citizens, as to the parties who were citizens of *South Carolina*.—In support of these several propositions the following authorities were cited: 1 *H. Bl.* 149. *Vatt. B.* 3. c. 77. *Lee on Capt. Bynk. B.* 1. c. 7. *Vatt. B.* 3. c. 18. f. 295. *Jenk.* 121. *Sir T. Park.* 121. *Plow.* 243, 324. 1 *H. Bl.* 413. 2 *Bl. Com.* 405, 409. 2 *Wood.* 130. 4 *Bl. Com.* 386. 1 *Hal. P. C.* 413. 3 *Inst.* 55. 1 *Hawk.* 68. 3 *Bl. Com.* 259. 3 *T. Rep.* 731, 2, 3, 4. 1 *Woodes.* 146. *Cro. Car.* 460. 16 *Vin. Abr.* 85, 6. 3 *Bl. Com.* 260. *Park.* 267. 1 *P. Wm.* 307. 1 *Dall. Rep.* 393. *Hind. ch.* 129. 1 *Vern.* 58.

2. On the second point, it was urged, that although the word "sequestration" was used in the *Georgia* law, yet, that the law directed the debt to be collected, *in the same manner as debts confiscated*, and to be put into the treasury, for the use of the state, until it should be otherwise appropriated; and that the state had never made any other appropriation; but, on the first opportunity, claimed it as a forfeiture. The election, therefore, to consider it as a confiscation, was reserved by the state to herself; and her subsequent conduct makes the reservation absolute. The exception of debts in the *South-Carolina* law cannot govern the case as to *Powell & Hopton*; for that law is only referred to for the manner and form, not for the subjects of confiscation. It only remains, therefore, to enquire, whether, independent of *Georgia*, the operation and existence of her law can be, and has been, defeated and annulled. The peace merely does not effect the right of the state; for, the condition of things at the conclusion of the war is legitimate; and all things not mentioned in the treaty, are to remain as at the conclusion of it. The treaty of 1783 does not affect the right of the state; for, though it provides, generally, in the 4th article, that creditors, on either side, shall meet with no lawful impediment, in recovering their debts, this ought to be understood merely as a provision that the war, abstractedly considered, shall make no difference in the remedy, for the recovery of *subsisting* debts; that the remedy shall not be perplexed by instalment laws, pine-barren laws, bull laws, paper money laws, &c; but it does not decide, what are *subsisting* debts, which can only, indeed, be decided on the general principle of the law of nations. Laws of sequestration and confiscation, are not, however, the object of the 4th article of the treaty of peace; but of a subsequent article, in which Congress only promise (all, indeed, that they could do) to recommend to the states, revision and restitution. Debts discharged by law, where they originated, are every where discharged. Such is not only the doctrine of *Georgia*, but of the *British* Statesmen and Judges wherever the question has arisen. The *Federal Constitution* does not affect the right of the state; for, though  
it

it gives effect to the treaty of peace, it furnishes no rule for construing the meaning of the parties to that instrument. In relation to these arguments, the following authorities were cited:—*State papers, Jefferson to Hammond, Hinde Ch. 127. 1 Br. Ch. 376. 3 Bac. Abr. 310. Caermarthen's Memorial, American Museum, May 1787. 1 Hen. Bl. 123. 135. 3 T. Rep. 732. 1 H. Bl. 149. 2 Br. Ch. 11. 1 H. Bl. 146.* 1794.

For the defendants, *Bradford* (the attorney-general) *E. Tilghman* and *Lewis* made the following points:—1st That the debts due to *Powell & Hopton*, had not been confiscated by the law of *South-Carolina*, and, therefore, were not confiscated by the words of reference in the law of *Georgia*; nor had *Georgia* a right to confiscate the property of the citizens of other states. 2d. That even if the law of *Georgia* had confiscated *Brailsford's* interest in the debt, the right to recover the two thirds belonging to *Powell & Hopton* was unimpaired. 3d. That the debt, as it respects *Brailsford* himself, is not confiscated, but sequestered; and that the sequestration had not been enforced by any inquest of office, seizure, or other act tantamount to an office or seizure. 4th. That the Peace alone, without any positive compact, restored the right of action to the original creditors. 5th. That without recourse to the general principle of the law of nations, the treaty expressly revives the right of action, by removing all legal impediments to the recovery of bona fide debts, and the treaty is the supreme law of the land, by virtue of the Federal Constitution. In support of these propositions the following authorities were cited:—3 *Bac. 203. 2 Co. 67. 1 P. Wm. 307. Curs. Canc. 89. 1 Dom. Civ. L. 138. 147. Magna Carta. Sir T. Park. 267. 3 T. Rep. 734. Vatt. b. 4. c. 1. f. 8. ib. c. 2. f. 20. 22. Burn. Ec. L. 157. Carth. 148. Grot. b. 3. c. 20 f. 16. p. 700. 1 Dall. Rep. 233. 1 H. Bl. 123. 136. 2 Bro. ch. 11. 1 B. c. 409. 240. Sir T. Raym. Saunf. 45. Plowd. 259. 3 Inst. 55. 1 Hawk. 68. State papers Byng. b. 1 c. 7. 1 Ver. 58. Circular Letter of Congress.*

The argument having continued for four days, the Chief Justice delivered the following charge on the 7th of February.

JAY, Chief Justice. This cause has been regarded as of great importance; and doubtless it is so. It has accordingly been treated by the Counsel with great learning, diligence and ability; and on your part it has been heard with particular attention. It is, therefore, unnecessary for me to follow the investigation over the extensive field into which it has been carried: you are now, if ever you can be, completely possessed of the merits of the cause,

The

1794

The facts comprehended in the case, are agreed; the only point that remains, is to settle what is the law of the land arising from those facts; and on that point, it is proper, that the opinion of the court should be given. It is fortunate on the present, as it must be on every occasion, to find the opinion of the court unanimous: We entertain no diversity of sentiment; and we have experienced no difficulty in uniting in the charge, which it is my province to deliver.

We are then, Gentlemen, of opinion, that the debts due to *Hopton & Powell* (who were citizens of *South-Carolina*) were not confiscated by the statute of *South-Carolina*; the same being therein expressly excepted: That those debts were not confiscated by the statute of *Georgia*, for that statute enacts, with respect to *Powell & Hopton*, precisely the like, and no other, degree and extent of confiscation and forfeiture, with that of *South-Carolina*. Wherefore it cannot now be necessary to decide, how far one state may of right legislate relative to the personal rights of citizens of another state, not residing within their jurisdiction.

We are also of opinion, that the debts due to *Brailsford*, a *British* subject, residing in *Great Britain*, were by the statute of *Georgia* subjected, not to confiscation, but only to sequestration; and, therefore, that his right to recover them, revived at the peace, both by the law of nations and the treaty of peace.

The question of forfeiture in the case of joint obligees, being at present immaterial, need not now be decided.

It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still both objects are lawfully, within your power of decision.

Some stress has been laid on a consideration of the different situations of the parties to the cause: The State of *Georgia*, sues three private persons. But what is it to justice, how many, or how few; how high, or how low; how rich, or how poor; the contending parties may chance to be? Justice is indiscriminately due to all, without regard to numbers, wealth, or rank. Because to the State of *Georgia*, composed of many  
thousands

1794.

thousands of people, the litigated sum cannot be of great moment, you will not for this reason be justified, in deciding against her claim; if the money belongs to her, she ought to have it; but on the other hand, no consideration of the circumstances, or of the comparative insignificance of the defendants, can be a ground to deny them the advantage of a favourable verdict, if in justice they are entitled to it.

Go then, Gentlemen, from the bar, without any impressions of favor or prejudice for the one party or the other; weigh well the merits of the case, and do on this, as you ought to do on every occasion, equal and impartial justice."

The jury having been absent some time, returned to the bar, and proposed the following questions to the court.

1 Did the act of the State of *Georgia*, completely vest the debts of *Brailsford, Powell & Hopton*, in the State, at the time of passing the same?

2. If so, did the treaty of peace, or any other matter, revive the right of the defendants to the debt in controversy?

In answer to these questions, the CHIEF JUSTICE stated, that it was intended in the general charge of the court, to comprise their sentiments upon the points now suggested; but as the jury entertained a doubt, the enquiry was perfectly right. On the 1st question, he said it was the unanimous opinion of the judges, that the act of the State of *Georgia* did not vest the debts of *Brailsford, Powell & Hopton*, in the State at the time of passing it. On the 2d question he said, that no sequestration divests the property in the thing sequestered; and, consequently, *Brailsford*, at the peace, and indeed, throughout the war, was the real owner of the debt. That it is true, the State of *Georgia* interposed with her legislative authority to prevent *Brailsford's* recovering the debt while the war continued, but, that the mere restoration of peace, as well as the very terms of the treaty, revived the right of action to recover the debt, the property of which had never in fact or law been taken from the defendants: and that if it were otherwise, the sequestration would certainly remain a lawful impediment to the recovering of a bona fide debt, due to a *British* creditor, in direct opposition to the 4th article of the treaty.

After this explanation, the jury, without going again from the bar, returned a *Verdict for the defendants*.

GLASS.